APPEAL NO. 010090

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 4, 2000. With respect to the issues before her, the hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on August 29, 1996, with an impairment rating (IR) of zero percent in accordance with the report of the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In his appeal, the claimant essentially argues that the hearing officer erred in giving presumptive weight to the designated doctor's certification of MMI and IR because he contends that clarification should be sought from the designated doctor to determine the effects of an August 9, 2000, spinal surgery on his MMI date and IR. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that he injured his neck, low back, and right shoulder in a slip and fall at work. Dr. S examined the claimant at the request of the carrier and certified that the claimant reached MMI on March 20, 1995, with an IR of zero percent. That certification was disputed and Dr. M was selected by the Commission to serve as the designated doctor. In a Report of Medical Evaluation (TWCC-69) dated November 19, 1996, Dr. M certified that the claimant reached MMI on August 29, 1996, with a zero percent IR. The claimant testified, and the medical records in evidence confirm, that the claimant's cervical spine was treated conservatively with physical therapy and epidural steroid injections; that the claimant had ongoing problems in the years after 1996; that the claimant continued to receive therapy and injections to treat those problems; that the ongoing conservative treatment became less effective in controlling the claimant's symptoms; that in September 1999 the claimant was referred to Dr. B; and that Dr. B performed cervical surgery, an anterior discectomy, corpectomy, decompression, and fusion at C5-6 and C6-7, on August 9, 2000. The claimant stated that he has been off work since the date of his surgery; that he missed only limited time from work, using his sick time, in the years from the date of injury to the date of his surgery; and that he has not been paid any income benefits in this case.

As the hearing officer noted in her discussion, the real question in this case is whether it is proper and reasonable to ask Dr. M, the designated doctor, to consider the effects of the claimant's August 2000 spinal surgery on his earlier certification of MMI and IR. As noted above, Dr. M examined the claimant in November 1996 and certified that the claimant reached MMI on August 29, 1996, with an IR of zero percent. We have long recognized that a designated doctor may amend a certification of MMI and IR if he does so for a proper purpose and within a reasonable time. Texas Workers' Compensation Commission Appeal No. 000138, decided March 8, 2000; Texas Workers' Compensation

Commission Appeal No. 972233, decided December 12, 1997. In Finding of Fact No. 9, which was not appealed, the hearing officer found that the "Claimant's August 9, 2000 surgery is a proper reason to seek an amended report from [Dr. M] on the issues of MMI and IR." Thus, the primary focus of this case, both at the hearing and on appeal, is the requirement that an amendment be sought and made within a reasonable time. We have previously stated that the question of what constitutes a reasonable time for a designated doctor to amend his report is a question of fact and that the period of time that will be considered reasonable may well vary from case to case according to the facts of a given case. Texas Workers' Compensation Commission Appeal No. 941168, decided October 14, 1994; Texas Workers' Compensation Commission Appeal No. 992951, decided February 14, 2000; Texas Workers' Compensation Commission Appeal No. 000802, decided May 22, 2000. In this instance, the hearing officer determined that the nearly four-year delay on the part of the claimant in seeking an amendment from Dr. M was not reasonable. Nothing in our review of the record demonstrates that the hearing officer's determination in that regard is so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the hearing officer's determination that it would not be appropriate to ask Dr. M to consider amending his report to assess the effects of the claimant's spinal surgery on the date of MMI and IR. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). In Texas Workers' Compensation Commission Appeal No. 950615, decided June 5, 1995, the Appeals Panel noted that resolution of an IR cannot be indefinitely deferred to await the results of a potential lifetime course of medical treatment and this case illustrates that point. If the claimant is to receive any modification of his IR in this case, he would seem to be limited to the provisions of Section 410.307 in his attempt to do so.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge